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U.S. Citizenship
and Immigration
Services

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MAR 17 2004

FILE: WAC 01 277 51033 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:


Beneficiary:

PETITION: Immigrant Petition for a Alien Worker as a Skilled Worker or Professional Pursuant to
Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1153(b)(3), as a skilled worker or professional. The petitioner is a home health care firm. It seeks to employ the beneficiary permanently in the United States as a home health care nurse. The petitioner asserts that the beneficiary qualifies for a blanket labor certification pursuant to 20 C.F.R. § 656.10, Schedule A, Group I. The petitioner submitted the Application for Alien Employment Certification (ETA 750) with the Immigrant Petition for Alien Worker (I-140). The director determined that the petitioner had not established that it had the financial ability to pay the beneficiary the proffered wage as of the priority date of the visa petition.

On appeal, the petitioner asserts that it has the ability to pay the beneficiary's proffered wage and requests reversal of the director's decision.

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Section 203(b)(3)(A)(ii) of the Act further provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

The regulation at 8 C.F.R. § 204.5(g) provides in pertinent part:

(2) Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. . . . In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

The regulation at 8 C.F.R. § 204.5(d) additionally provides that the priority date of petitions filed for classification under section 203(b) of the Act which are accompanied by an application for Schedule A designation or with evidence that the alien's occupation is a shortage occupation under the Department of Labor's Market Information Pilot Program "shall be the date the completed, signed petition (including all initial evidence and the correct fee) is properly filed with the Service."

Eligibility in this case rests upon the petitioner's ability to pay the wage offered as of the petition's priority date, which is the date the completed, signed petition was properly filed with the Bureau. Here, the petition's priority date is August 3, 2001. The beneficiary's salary as stated on the labor certification is \$16.00 per hour or \$33,280 annually.

In support of the petition, the record contains copies of the petitioner's 2000 W-3 Transmittal of Wage and Tax

Statements, 2001 W-2's of various employees, quarterly wage and withholding reports for the period from January 2001 to January 2002, and a copy of the petitioner's Form 1120, U.S. Corporation Income Tax Return for 2001. This tax return indicates that it covers a fiscal year from April 1, 2001 to March 31, 2002. It contained the following information:

Gross receipts or sales	\$ 531,909
Officers' compensation	145,600
Salaries and Wages	319,408
Taxable income before net operating loss deduction	-127,507

As noted by the director, despite instructions to submit all schedules and attachments with the federal income tax returns, the petitioner failed to submit a complete Schedule L with this tax return. Therefore, its net current assets could not be evaluated.

The director concluded that the evidence failed to establish that the petitioner had established that it had the ability to pay the beneficiary's proffered wage as of the priority date of the petition and continuing until the present. We concur. The petitioner's taxable income (before the NOL deduction) of -\$127,507 is clearly insufficient to cover the beneficiary's offered wage.

On appeal, the owner of the petitioning company states that the company has not missed paying its employees for thirteen years. The owner asserts that 2001 was a bad year for all health care facilities in the United States. However, it is noted that the petitioner provided no specific evidence that 2001 was an uncharacteristically bad year for its own home health care business compared to other years. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg.Comm. 1972).

The owner of the petitioning business also asserts that his company will generate more revenue from the opening of an intermediate care facility for developmentally disabled children. It is noted that this argument is essentially speculative. A petitioner must establish its ability to pay based on the requirements set forth in 8 C.F.R. § 204.5(g)(2), which states that annual reports, federal tax returns and audited financial statements are the forms of primary evidence that will be considered. The petitioning owner further contends that he and his wife would be willing to pledge their personal real estate assets to meet the offered wage. Real property is not representative of assets that can easily be converted to cash. Taxable income and, in some cases, net current assets can properly be considered to constitute such funds that would readily be available to establish the petitioner's ability to pay the proffered wage. It is further noted that the petitioning company is a corporation, which is a separate and distinct legal entity from its owners and stockholders. Consequently the assets of its stockholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. See *Matter of M*, 8 I&N Dec. 24 (BIA 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980).

Based on the evidence contained in the record, the petitioner has not demonstrated the ability to pay the proffered wage as of the priority date of the petition and continuing until the beneficiary obtains lawful permanent resident status.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

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The petitioner has not met that burden.

ORDER: The appeal is dismissed.